



MS APPEAL BRIEF - PATENTS
1517-1034

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Robert C. HOCHTRITT et al. Conf. 7665

Application No. 10/660,694 Group 1772

Filed September 12, 2003 Examiner A. S. Thomas

STACK OF INTERFOLDED ABSORBENT
SHEET PRODUCTS

APPEAL BRIEF

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(i) Real Party in Interest

The real party in interest in this appeal is the assignee, SCA Tissue North America LLC, of Neenah, Wisconsin.

(ii) Related Appeals and Interferences

None.

(iii) Status of Claims

Claims 1-20 are pending and this appeal is taken from the rejection of all of the pending claims.

(iv) Status of Amendments

No amendment was filed subsequent to the final rejection on appeal.

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(v) Summary of the Claimed Subject Matter

The claimed invention is a stack of interfolded absorbent sheet products, either by itself (claims 1-17) or in combination with a particular type of dispenser (claims 18-20). The sheet products are preferably paper napkins (page 1, line 7). Each sheet is folded at least twice in perpendicular directions. If a given sheet is folded in half and then folded in half again in the perpendicular direction, the configuration depicted in Fig. 6 results, which the specification terms a "quarter folded" or "four panel" napkin (see the paragraph bridging pp. 3 and 4 of the specification). The sheet products are single ply and embossed.

In the claimed stack of sheet products, each sheet is interfolded relative to adjacent sheets, as is depicted for example in Figs 1-3.

Claim 1, the only independent claim, specifies that the claimed sheet stack is made up of single ply embossed sheets that are interleaved in the sense that each of the absorbent sheets within the stack comprises at least one pair of panels sandwiched between a pair of panels of another of the absorbent sheets within the stack.

As claims 12 and 13 make clear, the sheets may be entirely separated from one another, or may be interconnected to one another by tabs.

(vi) **Ground of Rejection to be Reviewed on Appeal**

The sole issue on appeal is whether claims 1-20 would have been obvious within the meaning of 35 USC §103(a), based on the collective teachings of EP 0286538 (EP '538), EP 0302382 (EP '382), or Freiburger et al (U.S. 5,516,000) each in view of Heath et al (U.S. 6,699,360).

(vii) **Argument**

EP '538 and EP '382 are discussed in the present specification at page 7, lines 3-6, in the context of acknowledging that a quarter-folded interleaved stack is known in the quite different context of stacks of facial tissue positioned in pop-up tissue dispensers. Freiburger is at best cumulative of EP '538 and EP '382 as regards its reference value relative to the claims on appeal.

However, the present specification goes on, at page 7, lines 10-17, to note that facial tissues are rarely embossed in practice; moreover, facial tissues are typically multi-ply. None of the tissues of the primary references depart from that normal practice.

As further noted on page 7 of the specification, while it is possible to find disclosures of embossed facial tissue, these are uncommon. U.S. 5,300,347 cited at page 7, line 12 of the specification is one example; Heath, the applied secondary reference, is another.

However, absent the teaching of the present invention, it plainly constitutes an impermissible exercise of hindsight to contend that a skilled artisan would have considered such disclosures in combination, much less that the skilled artisan would have been motivated to configure the embossed single ply tissues of Heath into the quarter- (or higher)-fold interleaved stack required by the claims on appeal.

For example, although Heath mentions facial tissues and napkins, the disclosure of the reference is primarily directed to bathroom tissue (aka toilet paper) manufactured in roll form. Such a disclosure is not suggestive of the proposed substitution of such material in place of the interfolded facial tissues in a pop-up box or package. Even in its broadest teaching, Heath refers to the configuration of his tissues as "serpentine," and nowhere describes or suggests that individual sheets of the tissue are folded.

The final rejection is seen to be further deficient in its attempt to identify motivation for the

proposed combination of the primary references in view of Heath. In particular, the purported motivation to configure the Heath tissue according to the primary references is "to provide an economical product with enhanced softness."

However, while the embossing of Heath is considered to increase softness, it is also desired for its effect of producing a roll of tissue having high bulk (see, for example, column 1, line 46; column 3, lines 24 and 27; column 17, lines 44-48; and column 19, lines 1-3 and 6).

The high bulk that Heath desires for his rolls of toilet paper would not suggest using such a product in the quite different environment of the folded and interleaved stacks disposed in the pop-up facial tissue dispensers of the primary references. In the pop-up dispensers of the primary references, the tissues must be able to slide past one another and slide along the edges of the container opening, without tearing and without the stack falling back downwards into the container.

A high bulk embossed tissue as in Heath in such an environment would likely be considered to increase the friction between adjacent tissues and to increase the likelihood of the tissues tearing as they are withdrawn

from the pop-up dispenser, and/or to snag and tear on the edges of the dispensing opening.

Thus, in addition to the impermissible use of hindsight reflected in the proposed combination of references, it is believed to be apparent that the skilled artisan would not have been motivated to make the proposed combination when the references are considered more fully, for at least the reasons discussed above.

A number of the dependent claims on appeal are seen to be independently patentable from claim 1. In particular, each of claims 8-11 and 13 recites features of preferred embodiments of the invention that admittedly are not described in any of the applied references. The final rejection seeks to address those claims with the conclusory allegation appearing at page 3, lines 1-3 of the final rejection; however, that allegation plainly lacks any factual or evidentiary underpinning sufficient to support a *prima facie* case of obviousness as against those claims.

Furthermore, claims 18-20 are directed to the combination of the sheet stack of claim 1 and a dispenser having a downwardly-directed opening. Such a combination is further patentably distinct from the applied prior art, because the primary references show only pop-up (i.e., top-dispensing) dispensers. The requirement of claims 18-

20 that the sheet stack is positioned in a dispenser having a downwardly-directed opening connotes an entirely different dispensing principle and system, in which the stack is not suspended from the edges of an opening as in the prior art, but rather is urged toward the opening by the weight of the remaining sheets in the stack.

The final rejection seeks to dismiss entirely the additional recitations of claims 18-20 by the incorrect contention that the orientation of the opening "is relative depending on how one views the dispenser and therefore does not distinguish over the prior art articles." However, that contention is incorrect. Claim 18 specifies an absolute orientation for the dispenser opening, i.e., downward. If one were to view such a dispenser standing on one's head, it might then appear to open upwardly but would in fact still open downwardly.

Conclusion

From the foregoing discussion, it is believed to be apparent that the rejection of claims 1-20 is improper and should be reversed. Such action is accordingly respectfully requested.

Respectfully submitted,

YOUNG & THOMPSON

By Andrew J. Patch
Andrew J. Patch
Attorney for Appellant
Registration No. 32,925
745 South 23rd Street
Arlington, VA 22202
Telephone: 703/521-2297

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(viii) Claims Appendix

1. A stack of interfolded absorbent sheet products, comprising a plurality of single ply absorbent sheets each of which is itself folded at least twice about axes that are perpendicular to one another, the absorbent sheets moreover comprising an embossed surface relief of a predetermined pattern or design, wherein each of said absorbent sheets within said stack comprises at least one pair of panels sandwiched between a pair of adjacent panels of another of said absorbent sheets within said stack.

2. The stack of interfolded absorbent sheet products according to claim 1, wherein each of said absorbent sheets is a single ply paper napkin having a basis weight of from about 10 to 20 lb.

3. The stack of interfolded absorbent sheet products according to claim 2, wherein said basis weight is from about 11 to about 17 lb.

4. The stack of interfolded absorbent sheet products according to claim 3, wherein said basis weight is from about 12 to about 15 lb.

5. The stack of interfolded absorbent sheet products according to claim 4, wherein said basis weight is about 13 lb.

6. The stack of interfolded absorbent sheet products according to claim 1, wherein each of said absorbent sheets is a paper napkin having two folds, the two folds each bisecting the napkin and being perpendicular to one another, thereby to form a napkin having four panels.

7. The stack of interfolded absorbent sheet products according to claim 6, wherein each napkin within said stack receives between two inwardly facing adjacent panels a pair of adjacent panels from each of two napkins disposed respectively above and below said napkin in said stack.

8. The stack of interfolded absorbent sheet products according to claim 1, wherein each of said absorbent sheets is a paper napkin comprising one fold in a longitudinal direction of the sheet and two folds in a transverse direction, such that said paper napkin comprises six equally sized panels.

9. The stack of interfolded absorbent sheet products according to claim 8, wherein an uppermost napkin in said stack has four lower panels sandwiched between two adjacent panels of a next lower napkin in said stack, whose lower four panels are in turn sandwiched between lowermost two panels of said uppermost napkin, and uppermost two panels of a third napkin in said stack.

10. The stack of interfolded absorbent sheet products according to claim 1, wherein each of said absorbent sheets is a paper napkin comprising one fold in a longitudinal direction of the sheet and three folds in a transverse direction, such that said paper napkin comprises eight equally sized panels.

11. The stack of interfolded absorbent sheet products according to claim 10, wherein an uppermost napkin in said stack has four middle panels sandwiched between two of a group of four upper panels of a second napkin in said stack, wherein said second napkin comprises four middle panels sandwiched between two of a group of four lowermost panels of said first napkin, and wherein two lowermost panels of said second napkin and two uppermost panels of a fourth napkin in said stack are

sandwiched between two of the four uppermost panels of a third napkin in said stack.

12. The stack of interfolded absorbent sheet products according to claim 1, wherein each of said absorbent sheets is entirely detached from all other absorbent sheets within said stack.

13. The stack of interfolded absorbent sheet products according to claim 1, wherein each of said absorbent sheets is attached by tabs to one or two other absorbent sheets within said stack.

14. The stack of interfolded absorbent sheet products according to claim 1, wherein said embossed surface relief is applied by embossing rollers during a converting phase of manufacturing said absorbent sheet products.

15. The stack of interfolded absorbent sheet products according to claim 1, wherein said embossed surface relief is applied by TAD formation of said absorbent sheets.

16. The stack of interfolded absorbent sheet products according to claim 1, wherein said embossed surface relief is of a continuous pattern over an entire surface of said absorbent sheets.

17. The stack of interfolded absorbent sheet products according to claim 1, wherein said embossed surface relief is applied along a peripheral region of said absorbent sheets.

18. In combination, a stack of interfolded absorbent sheet products according to claim 1 and a dispenser containing said stack, said dispenser comprising a downwardly-directed opening through which said absorbent sheets may be withdrawn one at a time.

19. The combination according to claim 18, wherein solely the weight of said stack urges said sheets toward said downwardly-directed dispensing opening.

20. The combination according to claim 18, wherein said dispenser comprises a main body portion housing said stack, said main body portion comprising at least one section oriented at an oblique angle in relation to a horizontal support surface for said dispenser.

(ix) Evidence Appendix

None.

(x) Related Proceedings Appendix

None.